

Message Text

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ACTION EB-07

INFO OCT-01 ARA-06 ISO-00 CAB-02 CIAE-00 COME-00 DODE-00

 DOTE-00 INR-07 NSAE-00 CIEP-01 FAA-00 L-03 H-02 SS-15

 NSC-05 OMB-01 TRSE-00 IO-13 /063 W

----- 125747

R 231655Z JUL 76

FM AMEMBASSY BRASILIA

TO SECSTATE WASHDC 6961

INFO AMCONSUL RIO DE JANEIRO

AMCONSUL SAO PAULO

C O N F I D E N T I A L SECTION 1 OF 2 BRASILIA 6473

E.O. 11652: GDS

TAGS: EAIR, BR

SUBJ: CIVAIR: FUEL TAX

REF: (A) BRASILIA 5413, (B) STATE 157958, (C) BRASILIA 5805,
 (D) BRASILIA 5081

CONGEN RIO DE JANEIRO DRAFTED THIS TELEGRAM, EMBASSY CONCURS.

1. SUMMARY. CONGEN RIO OFFICER VISITED CERNAI AND DISCUSSED FUEL TAX ISSUE. CERNAI BRIGADEIRO BERENGUER NOTED THAT CERNAI HAD COMPLETED STUDY OF FUEL TAX QUESTION, AND CONCLUDED THAT FUEL TAX QUESTION SHOULD BE CONSIDERED IN CONTEXT OF CHARTER BILATERAL BETWEEN US/BRAZIL. BRIG. BERENGUER RAISED ISSUE OF REPAYMENT OF BACK TAXES STATING THAT TIA HAD ACTUALLY UNDERPAID ITS FUEL TAXES. AFTER DISCUSSION OF LEGAL ISSUES, BRIG. BERENGUER SHOWED CONGEN OFF. CERNAI REPORT ON FUEL TAX ISSUE. DOCUMENT CONTAINED COMPLETE ASSESSMENT OF ISSUE FROM GOB POINT OF VIEW. IN LIGHT OF CONGEN OFFICER'S COMMENTS, BRIG. BERENGUER PROMISED FURTHER TO REVIEW PROPOSED GOB DIPLOMATIC NOTE ALTHOUGH WITHOUT MAKING ANY COMMITMENT THAT CERNAI WOULD CHANGE ITS POSITION. BRIG. BERENGUER SEEMED ANXIOUS TO DISCUSS FUEL TAX AND SHOWED SOME DEPARTURE FROM HIS PREDECESSOR'S POSITION ON THIS ISSUE.

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END SUMMARY.

2. CONGEN OFFICER RAISED ISSUE OF STATUS OF FUEL TAX EXEMPTION IN LIGHT OF COMMITMENTS MADE TO AMBASSADOR BY FONMIN SILVEIRA AND BRIG DEOCLECIO AT AIRWORTHINESS BILATERAL SIGNING (SEE REFTEL A). BRIG BERENGUER SEEMED WILLING TO DISCUSS ISSUE BUT STRESSED THAT COMMENTS WERE INFORMAL AND OFF THE RECORD. HE COMMENTED THAT TO BEGIN WITH CERNAI WAS ASKED TO CONSIDER COMMENTING ON FUEL TAX EXEMPTION IN LIGHT OF THE US/BRAZIL CIVAIR BILATERAL BY ITAMARATY. CERNAI THUS CONSIDERED THE ISSUE WITHIN THOSE LIMITS. BERENGUER NOTED THAT THE BILATERAL MADE NO MENTION OF CHARTERS AND HENCE BRAZIL WAS UNDER NO OBLIGATION TO GRANT EXEMPTION ON FUEL TAX TO CHARTER CARRIERS.

3. CONGEN OFFICER POINTED OUT THAT US HAS NOT BASED REQUEST ON BILATERAL BUT ON "RECIPROCITY". BERENGUER TOOK POSITION THAT AS BRAZIL HAS NO INTERNATIONAL ALL CHARTER AIR LINE RECIPROCITY IN THIS CASE WAS ONE WAY. AT THIS POINT BRIG BERENGUER ADMITTED THAT CERNAI HAD INDEED CONSIDERED THE TAX ISSUE'S RELEVANCE TO US/BRAZIL BILATERAL CIVAIR RELATIONS AND THAT IT MIGHT BE TIME FOR A BILATERAL ACCORD REGULATING CHARTERS (BERENGUER INDICATED ROUTES AND NUMBER OF CHARTERS WERE MOST IMPORTANT ASPECTS OF A CHARTER BILATERAL). CONGEN OFFICER WHEN ASKED FOR THE DEPT'S PROBABLE VIEW ON THIS DEMURRED BUT INDICATED PURELY PERSONAL VIEW THAT THIS WOULD BE A COMPLEX ISSUE IF IT EVER CAME TO A NEGOTIATION. BERENGUER STATED THAT WHEN ONE SIDE DIDN'T WANT AN AGREEMENT OR AN ISSUE THEY WERE PROBABLY GAINING SOMETHING FROM STATUS QUO. CONGEN OFFICER ASSURED BERENGUER THAT IF AND WHEN US RECEIVED REQUEST FOR CHARTER BILATERAL, US WOULD GIVE OFFICIAL REPLY AFTER NORMAL CONSIDERATION.

4. BRIG. BERENGUER RAISED ISSUE OF REPAYMENT OF BACK TAXES TO TIA AND STATED THAT TIA HAD ACTUALLY UNDERPAID TAXES BY 73 PERCENT. HE STATED THAT BY AN UNUSUAL SET OF CIRCUMSTANCES TIA HAD PAID ONLY 27 PERCENT OF TAXES ACTUALLY OWED. WHEN CONGEN OFFICER REQUESTED CLARIFICATION BERENGUER STATED THAT IT WAS A COMPLICATED TAX QUESTION WHICH HE WAS NOT QUALIFIED TO DISCUSS BUT THAT HE HAD BEEN ADVISED OF UNDERPAYMENT. HE NOTED THAT TIA WOULD HAVE TO PAY BACK TAXES BEFORE REPAYMENT WAS CONSIDERED. CONGEN OFFICER COMMENTED THAT OUR PROBLEMS WERE SUFFICIENTLY COMPLEX WITHOUT ADDING BACK TAX PROBLEM, BERENGUER SAID THAT HE

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DID NOT BELIEVE GOB WOULD RAISE ISSUE. HE DID NOT STATE WHETHER TIA WOULD PAY MORE TAX IN FUTURE.

5. CONGEN OFFICER AGAIN RAISED COMMITMENT OF HIGHEST LEVEL GOB OFFICIALS TO RELIEF FOR CHARTERS ON FUEL TAX. BERENGUER NOTED THAT MATTER NEEDED ACTION OF FINANCE MINISTRY AND ISSUE WAS BROADER THAN JURISDICTION OF AIR AND FOREIGN MINISTRIES. NEED FOR RELIEF SOONER RATHER THAN LATER WAS CITED BY CONGEN OFFICER

AND NOTE WAS TAKEN OF COMMERCE DEPT RECONSIDERATION OF FINDING OF RECIPROCITY (OF WHICH BERENGUER WAS ALREADY AWARE). BERENGUER THEN BEGAN DISCUSSION OF US LAW AND ENDED IT QUICKLY BY SAYING "I HAVE A COPY OF THE RELEVANT PORTION HERE IN MY DESK". HE THEN HANDED CONGEN OFFICEIAPNIAPY OF CERNAI REPORT ON FUEL TAX

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 NSC-05 OMB-01 TRSE-00 IO-13 /063 W

----- 125685

R 231655Z JUL 76

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C O N F I D E N T I A L SECTION 2 OF 2 BRASILIA 6473

ISSUE SPECIFICALLY ADDRESSED TO US DIPLOMATIC NOTE OF JANUARY 1976 WITH REQUEST OF CONFIDENTIALITY. CONGEN OFFICER HAD SOME MINUTES TO LOOK OVER A LENGTHY AND DETAILED ASSESSMENT OF ENTIRE FUEL TAX ISSUE FROM GOB POINT OF VIEW APPARENTLY PREPARED BY CERNAI STAFF FOR CERNAI PLENARY SESSION (ALL CERNAI DECISIONS ARE MADE IN PLENARY SESSION) AND FONOFF USE.

6. DOCUMENT CONTAINED A BRIEF HISTORY OF ISSUE FOLLOWED BY RESUME OF US NOTE. REPORT NOTED GOB VERSION OF VARIG, PANAM AND BRANIFF POSITIONS. IT THEN CITED RELEVANT US AND BRAZILIAN LEGISLATION AND CONTAINED RESULTS OF LEGAL RESEARCH ON BACKGROUND OF US LEGISLATION. REPORT ALSO CONTAINED SECTION RESPONDING TO ALLEGATION OF VIOLATIONS OF CHICAGO CONVENTION AND RELATED ICAO RESOLUTIONS CONTAINED IN US NOTE WITH CITATION OF STATEMENT DEPOSITED WITH ICAO BY BRAZIL IN 1967 AND INDICATING THAT BRAZIL WAS IN COMPLIANCE WITH ALL ICAO PROVISIONS. THIS WAS FOLLOWED BY CERNAI ASSESSMENT OF ISSUE (I.E. EFFECT ON BILATERAL AGREEMENT, CIVAIR RELATIONS WITH US, SCHEDULED AIR TRAFFIC) REPORT THEN ENDED WITH SUGGESTION OF AUTHOR THAT CHARTER SITUATION BE

PUT INTO CONTEXT OF AGREEMENT ON CHARTERS AND THAT US BE SENT
DIPLOMATIC NOTE TO THAT EFFECT. THIS WAS FOLLOWED BY A DRAFT
DIPLOMATIC NOTE TO BE SUBMITTED TO FONOFF. CONGEN OFFICER WAS
ALLOWED TO PERUSE DOCUMENT (APPROX 12 PAGES SINGLE SPACED)
FOR A FEW MINUTES AND THUS RECOLLECTION IS INCOMPLETE. NONTHELESS
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IT SEEMS CLEAR THAT BRIG BERENGUER'S PREVIOUS COMMENTS WERE
ACCURATE REFLECTIONS OF CERNAI SUBMISSION TO FONOFF.

7. AFTER PERUSAL OF REPORT, CONGEN OFFICER NOTED HIS DISAPPOINT-
MENT IN PROPOSED RESPONSE TO USG ESPECIALLY AS IT REPRESENTED
NO MOVEMENT IN GOB POSITION. BRIG BERENGUER NOTED THAT REVISION
WAS STILL POSSIBLE (IMPLYING THAT REPORT HAS NOT YET GONE TO
FONOFFICE). BERENGUER PROMISED TO INSERT "A FEW WORDS" NOTING
THAT WHILE CERNAI SAW NO OBLIGATION TO ACCOMMODATE USG ON THIS
ISSUE CERNAI ALSO SAW NO OBJECTION AND IN VIEW OF EXCELLENT
OVERALL RELATIONS AMICABLE RESOLUTIONS WAS DESIRABLE. CONGEN
OFFICER COMMENTED THAT THIS WAS "SOME IMPROVEMENT" IN CERNAI'S
PROPOSED RESPONSE.

8. COMMENT: THE MANNER IN WHICH THIS MEETING OCCURRED WAS
UNUSUAL AS THE APPOINTMENT AT CERNAI WAS NOT WITH BRIG BERENGUER
INITIALLY. HE EVIDENTLY WAS ANXIOUS TO DISCUSS THIS ISSUE.
GENERAL TONE OF DISCUSSIONS WAS FRANK AND INFORMAL DESPITE
NATURE OF THE CERNAI PRESIDENT'S COMMENTS.

9. BERENGUER SEEMED QUITE ANNOYED THAT TIA WOULD ASK FOR BACK
TAX REPAYMENTS AND BY TONE AND GESTURE INDICATED THAT THIS WAS
VIRTUALLY IMPOSSIBLE. THE ISSUE OF TAX UNDERPAYMENTS WAS CLEARLY
INTENDED AS A WARNING NOT TO PRESS ON THIS ISSUE. CONGEN WILL
ATTEMPT TO FIND OUT IF THERE IS ANY VALIDITY TO CLAIM OF UNDER-
PAYMENT. THE PROMISED IMPROVEMENT IN THE GOB RESPONSE MAY OR
MAY NOT MATERIALIZE, HOWEVER BRIG BERENGUER SEEMED TO APPROACH
ISSUE OF FUEL TAX WITHOUT A RIGID ATTITUDE. ASIDE FROM QUESTION
OF BACK TAXES HE DID NOT SEEM READY TO ALLOW FUEL TAX TO BECOME
MAJOR IRRITANT. SIGNIFICANTLY, ALTHOUGH HE STATED GOB WOULD NOT
ALLOW BRAZILIAN FLAG INTERNATIONAL ALL-CHARTER LINE TO OPERATE
HE DID NOT REPEAT DESIRE TO DISCRIMINATE AGAINST CHARTER CARRIERS
AND IN FAVOR OF SCHEDULED CARRIERS AS HIS PREDECESSOR HAD
ON SO MANY OCCASIONS. THE DOCUMENT REFERRED TO IN PARAS 6 AND 7
WAS INTERNAL ASSESSMENT SHOWN PRIVATELY AND WITH SOME HESITATION.
IT WAS WELL-WRITTEN AND CAREFULLY DONE GIVING A COMPREHENSIVE
ASSESSMENT OF SITUATION WITHOUT INCLUDING COMMENTS ON POSSIBLE
ISG REACTIONS (AT LEAST AS SHOWN TO CONGEN OFFICER).

10. FURTHER EMBASSY COMMENT WILL FOLLOW SEPTTEL.
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: CIVIL AVIATION, JET FUEL, TAXES, AVIATION AGREEMENTS, NEGOTIATIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 23 JUL 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: KelleyW0
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976BRASIL06473
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D760284-0623
From: BRASILIA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19760730/aaaaazmo.tel
Line Count: 227
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION EB
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: 76 BRASILIA 5413, 76 STATE 157958, 76 BRASILIA 5805
Review Action: RELEASED, APPROVED
Review Authority: KelleyW0
Review Comment: n/a
Review Content Flags:
Review Date: 26 MAR 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <26 MAR 2004 by greeneet>; APPROVED <05 AUG 2004 by KelleyW0>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: CIVAIR: FUEL TAX
TAGS: EAIR, BR, US
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006